IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13019 of 2000

For approval and signature:

Hon'ble Mr JUSTICE D P BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAK KONDIRAM UTTAKAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

Mr K G Sheth, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2001

ORAL JUDGEMENT

The petitioner above named, has preferred thais petition under Article 226 of the Constitution of India, for appropriate writ, order or direction for quashing and setting aside an order dated 03.09.2000 recorded by the

Commissioner of Police, Vadodara, exercising powers under section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the Act'), finding the petitioner to be a dangerous person and holding that his activities are detrimental to the society at large and there is likelihood of breach of public order.

2. The petitioner has challenged the aforesaid order of detention mainly on the ground that there was non-applicaion of mind on the part of the detaining authority i.e. respondent no.1 herein. It has been contended by the petitioner that the authorities subordinate to the detaining authority had recorded statement of witnesses on 27/8/2000, 28.8.2000 and 29.8.2000 and have been verified by the detaining authority on 2.9.2000 and the order of detention was passed on the very next day i.e. on 3.9.2000. That in that view of the matter, there was no time lag between the submission of the papers to the detaining authority and the verification of the statements. Then there was also no time lag between the verification of statements and the order of detention. This clearly shows that the detaining authority had absolutely no time for considering the materials before him. Therefore, the order of detention of the petitioner suffers from the ground that there was total non-application of mind. The petitioner, therefore, prays that since the order of detention of the petitioner is illegal, it is required to be quashed and set aside. It is therefore, prayed that the present petition be allowed and the order of detention be quashed and set aside.

2. Rule was issued and Mr K G Sheth, learned AGP appears on behalf of the respondents. I have heard Ms. K U Mishra, learned Advocate for the petitioner and Mr K G Sheth, learned AGP for the respondents and have perused the papers. During the course of her argument, Ms K U Mishra has argued that the statements of witness recorded on 27th and 28th and 29th August, 2000, were verified on 2.9.2000 and the order of detention was passed on 3.9.2001 and there was non-application of mind for want of reasonable time-lag for due verification and consideration as to the genuiness of the statements recorded.

3. In support of the aforesaid argument, the learned Advocate for the petitioner has relied upon a decision of Kalidas Kahar v State, reported in 1993(2) GLR 1659. The Division Bench of this Court had considered this aspect in para 6 of the judgment which may be reproduced as under:

"His second contention is that the detaining authority has wrongly exercised the powers under section 9(2) of the PASA Act and by such wrong exercise of powers the detenu, right to make a representation under Article 22(5) of the Constitution has been infringed. He further elaborates his submission by pointing out that the statements of the witnesses have been recorded on 16th October, 1992 and that the said statements have been verified by the Superintendent of Police, C Division, Baroda City on 16th October, 1992. It has been pointed out by the learned AGP Mr Y M Thakkar that the proposal in the case was made on 16th October, 1992 and the order of detention was passed on 17th October, 1992. It is rather curious that the entire bunch of material was supplied by the sponsoring authority at the time of making the proposal and that has been promptly accepted by the detaining authority and passed the order on the next day itself. At the time of exercising the privilege under section 9(2) of PASA, the balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. as against this there is a provision under section 9(2) craved out on the basis of Article 22(5) of the Constitution which provides that nothing in sub-section (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle

> formality as it affects the public interest on the one hand and the right of the detenu on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of PASA. Looking to the facts and circumstances of the case, it is clear, as stated hereinabove, that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under section 9(2) as the proposal was made on 16th October, 1992 and the order of detention was passed on the following day, i.e. on 17th October, 1992, nor is there any material to show as to how he examined the necessity of exercising the power under section 9(2). Under the circumstances, in our view, it is a wrong exercise of power under sec. 9(2) which has affected the detenu's right of making as effective representation under Article 22(5) of the Constitution of India and therefore, the illegal and the impugned detention order is required to be quashed and set aside."

Therefore, in that case also the statements of witnesses were recorded in October, 1992. The said statements were verified by the detaining authority on the same day i.e. on 16.10.1992 and the detention order was passed on 17.10.1992. On the aforesaid facts, it was held by this court in the aforesaid decision that it was a case of non-application of mind and, therefore, the order of detention stands vitiated. Similar observations can be found from a decision of this court in the case of Ranubhai Bharward v. State of Gujarat, reported in 2000(3) GLR 2696.

4. In view of the aforesaid decision, it becomes clear that there is a case of non-application of mind in the case before us also. In fact the detaining authority was required to carry out some exercise which would not merely show that he has verified the statements but it really appears that he has applied his mind to the facts stated in those statements and the genuineness and correctness of the statement were in fact verified by him. The records do not show such an application of mind and in absence of such materials. It is not possible to uphold the decision arrived at by the detaining authority. I find no reason to differ from the view expressed in the foregoing discussion in the aforesaid

decision of this court. Once the principle laid down in the aforesaid decision is accepted, then in that event, the facts of the present case would stand squarely covered by the aforesaid decision and once such decision is followed, the order of detention of the petitioner impugned in the petition will have to be treated as illegal.

5. In the above view of the matter, there is no alternative but to allow this petition. Consequently, the present petition is ordered to be allowed and the order of detention passed on 03.9.2000 against the present detenu by the Police Commissioner, Vadodara is quashed and set aside. The detenu is ordered to be set at liberty, if not required in any other case. Rule is made absolute. Direct Service is permitted.

20.4.2001 [D P Buch, J.]
msp